IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

Crl.MC.No. 3463 of 2007()

CC.554/2005 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

.....

PETITIONER: ACCUSED NO.3

RAMAKRISHNAN NAIR,
AGED 54 YEARS, S/O.KRISHNAN NAIR,
SAROVARAM, CHEVARAMBALAM ROAD, CHEVAYUR,
KOZHIKODE DISTRICT-16.

BY ADV. SRI.P.PUSHPARAJAN
SRI.RAJA. P.R.S.
SRI.O.K.MURALEEDHARAN

RESPONDENTS: COMPLAINANT AND STATE

---

1. K.ASHOK KUMAR, AGED 58 YEARS,
S/O.LATE APPUNNI MENON P.K., LAKSHMI HOUSE
NO.32, JAYANTHI NAGAR COLONY, P.T.USHA ROAD,
KALATHINKUNNU AMSON AND DESOM, KOZHIKODE TALUK.

2. STATE REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3463 of 2007

Dated this the 22nd day of November, 2007

O R D E R

Petitioner is the 3rd accused in a prosecution under Section 138 of the Negotiable Instruments Act. Altogether there were 3 accused persons. Accused 1 and 2 came before this Court with a Crl.M.C.No.2402 of 2006 to quash the proceedings against them. By order dated 13.12.06 in that Crl.M.C, proceedings in so far as it relates to accused 1 and 2 was quashed. The prosecution under Section 138 of the Negotiable Instruments Act hence continues only in so far as the petitioner, the 3rd accused is concerned.

2. The petitioner, the 3rd accused has come before this Court with a prayer that the proceedings against him may also be quashed. What is the reason ? It is not disputed that the cheque in favour of the complainant was issued by the petitioner on an account maintained by him. The complainant had alleged that the amounts were due from the 1st accused, a company which was represented by the 2nd accused, its Managing Director. To discharge liability of the company, it was the petitioner, who was acting as the local manager, who issued the cheque. It is crucial to note that the facts that the cheque is signed by the petitioner, that it was issued by the petitioner to the complainant and that the cheque is drawn on an account maintained by the petitioner with the bank are not disputed. In these circumstances,

whether the liability which was sought to be discharged be one which is personal between the drawer of the cheque and the payee or whether the drawer of the cheque had issued the cheque to discharge the liability of the company, the liability of the drawer of the cheque would continue. It is not the law that Section 138 of the Negotiable Instruments Act will apply only to cases where cheques are issued for the discharge of liability which is personal between the drawer and the payee. In this view of the matter, even if the petitioner had issued the cheque to discharge the liability of the company as claimed by the complainant, the liability of the petitioner, the 3rd accused cannot be avoided. I do not, in these circumstances, find any reasons to quash the proceedings against the petitioner.

3. This Crl.M.C is, in these circumstances, dismissed. I may hasten to observe that I have only intended to hold that powers under Section 482 Cr.P.C cannot and need not be invoked in favour of the petitioner. The petitioner shall be entitled to raise all his contentions before the learned Magistrate in the course of trial. The dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to raise any appropriate contention before the learned Magistrate in the course of trial.

(R.BASANT, JUDGE)

rtr/-